

and of that 311,000 are classified as business owners. So about 80 percent of the people who would get hit by this surtax are the very job creators we are hoping will invest their money into their businesses to help the economy and to create new jobs. How do you create new jobs by taking more earnings away from the very employers who are creating the jobs? So, third, it is bad tax policy.

Fourth, Democrats argue: Well, the wealthy are not paying their fair share, and this too is something that doesn't stand up to scrutiny. These are from the Internal Revenue Service. These are their tables. The top earners pay the bulk of the taxes in this country. In fact, we have the most progressive income tax system of all of the industrialized countries—all of the countries in the OECD. The top 1 percent in our country earns 20 percent of all the income—that is pretty good—but they pay 38 percent of all of the income taxes. The top 2 percent earns about 28 percent of the total income. They pay over 48 percent—almost 50 percent. They pay almost half of all of the income taxes that are paid by the top 2 percent.

Some people say: Well, what about the payroll tax? That is exactly what we are cutting here. Remember? That is what they are getting a tax holiday from paying. So you have the top 2 percent of the people paying 50 percent of the taxes.

What do the bottom half pay? It turns out the Joint Committee on Taxation estimates that 51 percent of all households had either zero or negative income liability for the tax year 2009. So you have 2 percent of the people paying 50 percent and the bottom 50 percent paying none. In fact, the top 5 percent pays a whole lot more than the bottom 95 percent combined. Think of that. In our country the top 5 percent of the earners pay a lot more than the bottom 95 percent combined.

Then the question is: Is it fair to say about the United States progressive income tax code that the wealthy don't pay their "fair share" when the top 1 percent pays 38 percent, the top 2 percent pays almost half of all the taxes? I think that is a canard. I am not trying to defend rich people here, but what I am saying is it is unfair to say they are not paying their fair share.

Finally, my colleague DICK DURBIN—who I believe is going to be here shortly, and I hope will respond to what I am saying here—was interviewed on MSNBC on November 30. He said something that in retrospect I suspect he would say is inaccurate and would take back, but I want to quote him. He is talking about the payroll tax holiday and he said:

Jon Kyl rejected it. He said, no. There's no way we're going to impose any taxes on the wealthy people in this country.

Well, of course, Senator DURBIN knows that we impose a lot of taxes on the wealthy people in this country. He simply misspoke. I understand he sim-

ply misspoke, but it is a manifestation of the political dialogue here of one side accusing the other of favoring the rich over the poor. Can't we ask them to contribute a little bit more? Well, if it is the IRS, we are not asking them, we are forcing them. When the top 2 percent of all of our citizens pays half of all of the taxes and the bottom half pays none, when the top 5 percent pays 95 percent of all of the taxes and 95 percent pays the rest, it is hard to say the rich are not paying taxes.

In any event, my colleague Senator DURBIN, I am sure, would acknowledge that I have not said nor has anyone said, "There is no way we are going to impose any taxes on the wealthy people in this country." They are paying a lot of taxes.

Finally, we extended this tax cut holiday for 1 year a year ago in December. We did that as part of an overall budget deal. The Vice President of the United States, the leaders of the House and Senate negotiated this and the President went along with it. It was part of an overall agreement in which we said we will extend all of the existing tax rates, the so-called Bush tax cuts, that is, the rates that have been in effect since 2001 and 2003. We said we would extend this temporary tax holiday from the payroll tax cut. We would extend all of those. I supported that.

Frankly, that was the right thing to do, to extend all of these existing rates. The country at that point could not have stood an increase in taxes of over \$4 trillion, which is what it would have been not to extend the so-called Bush tax cuts. If we can do that again, I am all for it. I will support the extension of the payroll tax holiday. I will support the extension of the payroll tax holiday with other things being done as well. The point is there are times when it absolutely does not make any sense and there are times when it could make sense.

But because of the four other reasons I pointed out, this is what pays for Social Security benefits, it is bad economic policy, it is bad tax policy, and certainly the surtax that would fund this is something that would very much hurt small businesses and job creation. Those are reasons to be very skeptical about continuing this supposedly temporary tax holiday, and we should therefore only do it under circumstances that, in effect, override these objections, one of which would be to extend all of the taxes that expire at the end of next year—at the end of 2012, and to include this in them. That would be a good idea. It is also a good idea to "pay for" it; that is, to find an offset for the revenue loss here because we cannot leave Social Security holding the bag. When we borrow 40 cents of every dollar in general revenue to pay for this lost revenue, obviously, that is not a good idea. So if we can find offsets for it, that is another factor in deciding whether to do it. I believe Republicans will work to find offsets if we, in fact, are going to extend this payroll tax holiday.

Clearly, you don't necessarily need to find offsets to pay for any tax or every tax reduction. We are keeping current rates where they are, for example, when they otherwise would expire at the end of next year. Some people say: Well, that is the Bush tax cuts. That is right. Did revenues to the Treasury go down when the Bush tax rates were reduced in 2001 and 2003? No. Tax revenues—the amount of money coming into the Treasury of the United States—actually increased after the so-called Bush tax cuts. So sometimes, for economic growth reasons, keeping taxes where they are or even reducing them in some cases makes a lot of sense. In this case, however, because you are having to take it out of the Social Security trust fund, you need to replenish that money, you need to pay for it, and that is why we need to have the offsets I spoke of.

The bottom line is the payroll tax cut holiday can be a little confusing. There are some very important reasons not to do this again. It doesn't produce a good result and it can produce some bad results. If there are offsetting policies that more than overcome these bad features, then it is something I think a lot of Republicans will look to. As I said a year ago, I was willing to support the extension of it because we extended the other tax rates as well. If we do that again, obviously, it is something I would be supportive of.

I hope this helps to clarify the debate when we deal with this subject later on this week and perhaps even in the final week—that we at least hope is the final week we are here—before Christmas.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER (Mr. COONS). The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

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#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

## EXECUTIVE SESSION

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**NOMINATION OF EDGARDO RAMOS  
TO BE UNITED STATES DISTRICT  
JUDGE FOR THE SOUTHERN DIS-  
TRICT OF NEW YORK**


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**NOMINATION OF ANDREW L. CAR-  
TER, JR., TO BE UNITED STATES  
DISTRICT JUDGE FOR THE  
SOUTHERN DISTRICT OF NEW  
YORK**


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**NOMINATION OF JAMES RODNEY  
GILSTRAP TO BE UNITED  
STATES DISTRICT JUDGE FOR  
THE EASTERN DISTRICT OF  
TEXAS**


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**NOMINATION OF DANA L.  
CHRISTENSEN TO BE UNITED  
STATES DISTRICT JUDGE FOR  
THE DISTRICT OF MONTANA**


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The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations, which the clerk will report.

The bill clerk read the nominations of Edgardo Ramos, of Connecticut, to be United States District Judge for the Southern District of New York; Andrew L. Carter, Jr., of New York, to be United States District Judge for the Southern District of New York; James Rodney Gilstrap, of Texas, to be United States District Judge for the Eastern District of Texas; and Dana L. Christensen, of Montana, to be United States District Judge for the District of Montana.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour of debate equally divided in the usual form.

The Senator from Vermont.

Mr. LEAHY. Today the Senate will finally consider nominations to fill four vacancies on Federal district courts, all of which were reported by the Judiciary Committee unanimously in September and early October. All four nominees Edgardo Ramos and Andrew Carter, nominated to the Southern District of New York, James Rodney Gilstrap, nominated to fill a judicial emergency vacancy in the Eastern District of Texas, and Dana Christensen, nominated to the District of Montana are superbly qualified nominees with the strong support of their home state Senators. It should not have taken three months or more for the Senate to vote on their nominations.

I thank the Majority Leader for securing a vote on these nominations, but I am disappointed that the Senate Republican leadership would not agree to a vote on the nomination of Jesse Furman to fill a third vacancy on the Southern District of New York. Like Edgardo Ramos, Andrew Carter and James Gilstrap, his nomination was re-

ported by the Judiciary Committee on September 15 without opposition from a single member of the Committee, Democratic or Republican. Mr. Furman, an experienced Federal prosecutor who served as Counselor to Attorney General Michael Mukasey for two years during the Bush Administration, is a nominee with an impressive background and bipartisan support. There is no reason or explanation for why the Senate could not also consider his nomination today.

There is also no reason or explanation why Republican leadership will not consent to consider the other 20 judicial nominations waiting for final Senate action, all but four of which were reported by the Committee without any opposition, all but two of them with significant bipartisan support. Senator GRASSLEY and I have worked together to ensure that each of the 25 nominations now on the Senate Calendar was fully considered by the Judiciary Committee after a thorough, fair process, including completing our extensive questionnaire and questioning at a hearing. Before each of these nominees was selected by the President, the White House worked with the nominees' home state Senators who support them, the FBI completed an extensive background review, and each nominee was peer reviewed by the American Bar Association's Standing Committee on the Federal Judiciary. When the nominations have been favorably reported by the Judiciary Committee after this extensive and thorough process, there is no reason for months and months of further delay before they can start serving the American people.

It is now December 5, with only weeks left in the Senate's 2011 session. I am concerned that we are not able to move more quickly at a time when we continue to hear from chief judges around the country about the overburdened courts in their districts and circuits. We need to consider at least eight judges every week in order to begin to catch up and erase the backlog that has developed from the delays in the consideration of consensus nominees caused by the Senate Republican leadership.

We should not repeat the mistakes of last year, when the Senate Republican leadership refused to consent to consider 19 judicial nominations reported by the Judiciary Committee, an exercise in unnecessary delay I believe to be without precedent with respect to such consensus nominees. It took us until June of this year, halfway into 2011, to consider and confirm 17 of these nominations that could and should have been considered before the end of 2010. Before we adjourn this year, there is certainly no reason the Senate cannot at least consider the 17 judicial nominations reported unanimously by the Committee this session, who are by any measure consensus nominees.

I hope that we do not see a repeat of the damaging decision by Senate Re-

publican leadership at the end of last year to refuse to agree to votes on those nominations. That decision stood in stark contrast to the practice followed by the Democratic majority in the Senate during President Bush's first two years. Last year, Senate Republicans refused to use the same standards for considering President Obama's judicial nominees as we did when the Senate gave up or down votes to all 100 of President Bush's judicial nominations reported by the Committee in his first two years. All 100 were confirmed before the end of the 107th Congress, including two controversial circuit court nominations reported and then confirmed during the lame duck session in 2002. The Senate last year should not have been forced to adjourn with 19 judicial nominations still on the Senate calendar.

With vacancies continuing at harmfully high levels, we cannot afford to repeat these unnecessary and damaging delays. There is no reason we cannot make significant progress this month and consider all of the consensus nominations now pending on the Senate calendar. That is what we did at the end of President Reagan's third year in office and President George H.W. Bush's third year in office, when no judicial nominations were left pending on the Senate Calendar. That is what we did at the end of the 1995 session, President Clinton's third year in office, when only a single nomination was left pending on the Senate calendar. That is also what we did at the end of President George W. Bush's third year, when seven of the nine judicial nominations left on the calendar by the Senate's Republican majority were among President Bush's most extreme ideological picks and had previously been debated extensively by the Senate. The standard has been that noncontroversial judicial nominees reported by the Judiciary Committee get Senate action before the end of the year. That is the standard we should follow this year.

We remain well behind the pace set by the Senate during President Bush's first term. By the end of his first term, the Senate had confirmed 205 district and circuit nominees, and had already confirmed 167 by this point in his third year. So far, the Senate has confirmed only 119 of President Obama's district and circuit nominees. Senate action before adjournment on all 25 judicial nominations that are before the Senate today would go a long way to help resolve the longstanding judicial vacancies that are delaying justice for so many Americans in our Federal courts across the country.

The 100 circuit and district court nominations we confirmed in President Bush's first two years leading to a vacancy total of 60 at the beginning of his third year is almost a complete reverse of the 60 the Senate was allowed to confirm in President Obama's first two years, leading to nearly 100 vacancies at the start of 2011. Yet, even following those years of real progress, in 2003 we